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CURRENT TOPICS

The New Judges

THOSE in a position to appraise the worth of individual members of the bench have for some time past mentally marked the new member of the Court of Appeal, Lord Justice TUCKER, for promotion. Educated at Winchester and New College, Oxford, he was called to the Bar by the Inner Temple in 1914, took silk in 1933, and was made a judge of the King's Bench Division in 1937. He has a well-merited reputation of being both a sound lawyer and a shrewd judge, and he will be a distinct asset to the Court of Appeal. Mr. Justice DENNING, who, since his appointment to the High Court Bench in 1944, has been trying divorces, mainly undefended, will no doubt feel more at home in the King's Bench Division, to which he has been transferred to take the place of Lord Justice Tucker. Mr. Justice Denning too is a profound lawyer. His academic past alone—a demy of Magdalen, First Class in Mathematics Moderations, First Class in the Mathematics Final School, First Class in the Final School of Jurisprudence and Eldon Scholar—indicate a first-class mental capacity. Mr. Justice AUSTIN ELLIS LLOYD JONES (now appointed to the Divorce Division) is the second county court judge to reach the High Court bench, the first having been the late Mr. Justice ACTON. He has been county court judge at Westminster and Uxbridge since 1939, and at Westminster alone since 1943. In the short time since then he has earned the good opinion of practitioners in that court. He came there with eight years' previous experience as a county court judge, on circuit No. 50 (Sussex) from 1931 to 1939. He goes to the High Court with the best wishes of all who have practised before him and respect his worth.

United Nations Indictment

THE indictment of twenty-four Nazi conspirators against civilisation has now been finally drafted and lodged with the International Military Tribunal by the U.S.A., the United Kingdom, the French Republic, and the U.S.S.R. It is a document of vast historic significance. Those who have studied and practised the law know that law is no formal and dry as dust abracadabra, but the living embodiment of human conscience and common-sense applied to the solution of human problems as they arise. If a law to deal with conspirators such as these has never until now been framed, it is because their enormities dwarf all crime since the beginning of history. It may now be seen by all how human conscience vindicates itself in law, and even those who in their ignorance and cynical pessimism said that there was no such thing as international law, will be compelled to admit that it is here and now in the making. The indictment is lengthy, as befits a catalogue of crime which makes the Newgate calendar look like a Jane Austen novel in comparison. But it fulfils all the requisites which English lawyers have been taught should characterise an indictment. It clearly specifies the crime charged, and it is void of duplicity and uncertainty. There will be no possibility of its being quashed on grounds such as these. The crimes alleged are "crimes against peace, war crimes and crimes against humanity" and "a common plan or conspiracy to commit those crimes." In addition to naming the defendants, it names a number of organisations, since dissolved, which should be declared criminal: the Reich cabinet, the Nazi leadership corps, the S.S., the S.D., the S.A., the Gestapo and the General Staff and High Command of the German armed forces. It traces the history of the plot from the day in 1921 when Hitler became leader of the National Socialist German Workers' Party and describes the objects of the plot to subject Germany to dictatorship by ruthlessly and cruelly exterminating opposition, and to carry on aggressive war. The horrible deportations, tortures, massacres and destruction, enslavement and plunderings to which Europe has been subjected by the Nazis during the last decade are set out in detail. This document is a powerful assurance to humanity and an even more powerful deterrent to malefactors.

Defence of War Criminals

THREE resolutions have been passed by the General Council of the Bar with regard to the defence of war criminals. The first states: "It is undesirable that a member of the English Bar should appear for the defence of war criminals accused before the International Military Tribunal at Nuremberg." The second emphasises that it is the duty of a member of the Bar, if properly instructed, to appear in any court in which he is accustomed to practise. This duty includes, the resolution states, the acceptance of a brief for the defendant in a case of treason against the Crown. The third resolution declares that it is no part of the duty of an English barrister to appear in any foreign court before which, although he may be entitled to appear, he possesses no exclusive right of audience. These resolutions appear to mark in no uncertain way the shock with which people in this country read the remark of Major WINWOOD, defending one Kramer at the Belsen trials, that at Belsen were interned "the dregs of all the ghettoes of Central Europe, people who had very little idea of what to do with their lives." This appears to have been part of a speech addressed to the court, and, quite apart from questions of good taste, it would appear to be obvious that remarks such as these could not possibly benefit the case of the accused, and if they were made on instructions it was the duty of defending counsel to point out to his client that such contentions, adopting the vile Nazi creed itself as a defence, could only harm his case. The Bar Council has taken

the only possible course in the circumstances to prevent the recurrence of a similar undignified incident, although the traditions of the English Bar are such as to render its recurrence extremely unlikely in any event.

The Budget

No one felt inclined to complain bitterly about a Budget which offered to the wage-earner substantial reliefs from income tax liability, to everybody 1s. off the standard rate and a substantial rise in the personal allowances, and to employers a reduction from 100 to 60 per cent. of their excess profits tax. The worst criticism appears to be that the changes in income tax and sur-tax are calculated to reduce their yield by £283,000,000 in 1946–47 and by £315,000,000 in a full year, against which there will be offset £225,000,000 through the ending of post-war credits. In any case, there is a further at present incalculable offset of the reduction in war-time expenditure which is bound to increase progressively as the war recedes into the past. There is also the inexplicable omission to restore the earned income allowance to its former level. The increase in the sur-tax will apparently only yield £7,000,000 a year in money, but it will yield something in satisfaction to those who regard the existence of big incomes as an anachronism. The new maximum rate on incomes above £20,000 is to be 10s. 6d. in the £. No one will mourn the passing of the legal minimum prices on the Stock Exchange, which were fixed at the beginning of the war when it was feared that there might be some panic selling of gilt-edged securities. These minima, the CHANCELLOR stated in his Budget speech, were increased in March, 1940, but they are now, and for some time past have been, quite out of relation with current prices and no longer serve any useful purpose. Among other tax changes which seem to have been generally welcomed are the exemption from purchase tax of certain domestic heating and cooking appliances and refrigerators, the reduction in the tax on hydrocarbon oils and the new bases of charge for motor duty. Finally, in connection with the increase in the income tax allowances the Inland Revenue Department has stated that this does not mean that all the 16,000,000 people under P.A.Y.E. are going to have their code numbers changed next April. The vast majority of taxpayers can take it for granted that there will be no change in their code number. If a number has to be changed, the tax office will notify this before April. The new tax tables coming into force on 6th April next will automatically give the benefit of the increased allowances and the reduction in the rates of tax.

The Acquisition of Land (Owner-Occupier) Regulations

AFTER an explanation by Sir HARTLEY SHAWCROSS, K.C., Attorney-General, of the effect of the Acquisition of Land (Owner-Occupier) Regulations, 1945 (S.R. & O., No. 759, dated 18th June, 1945), made under s. 58 (6) of the Town and Country Planning Act, 1945, a motion by Mr. C. S. Taylor in the Commons on 23rd October to annul the regulations was withdrawn by leave. Mr. Taylor said that the draftsman had an unenviable task, but he (Mr. Taylor) could not understand all that was in the order. The Attorney-General said that he only wished that there had been an explanatory memorandum attached to the regulations. He confessed that it would have saved him from burning a certain amount of midnight oil. At first sight the regulations appeared to be complicated and difficult to understand. This was inevitable because, when you have to provide in a written instrument for complicated sets of facts and you have to apply them in relation to complicated rules of law, it was exceedingly difficult to produce a document which had the appearance of utter simplicity. The regulations did not deal with the destination of compensation, but dealt merely with questions of machinery. Under the Act a person who establishes a right to compensation might also be entitled to additional compensation of one-third, if he showed that he was the owner-occupier for the purposes of the Act. What was to happen if the land was vested in trustees? What was done by the regulations was first, to divide into four categories the different types of trust interest which might arise in land. In their second, third and fourth columns the regulations provided for the different classes of persons whose occupancy or whose intention to occupy was to be sufficient to constitute owner-occupancy. There was nothing restrictive in the regulations of the right to owner-occupancy treatment. In answer to a suggestion by Earl Winterton, the Attorney-General said that he would see that discussions behind the chair would be made on the whole matter with a view possibly to an announcement being made on the subject of explanatory memoranda to regulations.

War Damage (Valuation Appeals) Bill

ON the second reading of the War Damage (Valuation Appeals) Bill in the House of Lords on 23rd October, the LORD CHANCELLOR explained that the Bill provided for an alteration in the machinery at present set up by the War Damage Act, 1943. There were no fewer than four values which in certain cases had to be considered. First of all, if a property was damaged, one had to consider the value of the property with the war damage made good. Then one had to consider the value of the property without the war damage being made good. It was the consideration of those two factors which enabled one to determine whether the case was one for a value payment or not. Then one had to consider the value of the property immediately before the war damage was occasioned, and the value of the property after the war damage. The consideration of those two factors enabled one to determine what the quantum of the value payment should be. All those were on the basis of the market values in 1939. Now s. 32 of the War Damage Act provided that appeals against the determination of the War Damage Commission should be made to the panel of referees appointed under the Finance Act, 1910. That showed that the panel of referees under that Act was an unsuitable tribunal. In those circumstances, it was proposed that a new tribunal should be set up, to be composed in part of persons skilled in the law and in part of valuers. The members of the tribunal were to be appointed by the Lord Chancellor. The tribunal was to be under the general direction of a legal president. The intention was that those various persons should be appointed as full-time members of the tribunal to begin with. As and when the work tailed off they should no doubt be able to employ some of them on a part-time basis. But throughout they should insist that no one who was sitting on those tribunals was himself professionally engaged in valuing or advising as to the value of property. The Bill did not apply to Scotland or to Northern Ireland. Having set up this tribunal, they intended also to give it jurisdiction to determine the fixation of global sums which might have to be fixed for various owners together. After VISCOUNT SIMON had said that he thought the proposal made in the Bill was admirable and that he hoped the House would accept it, the Bill was read a second time.

Recent Decision

In *Elderton and Another* v. *United Kingdom Totalisator Company, Ltd.*, on 24th October (*The Times*, 25th October), the Court of Appeal (the MASTER OF THE ROLLS and DU PARCQ and MORTON, L.JJ.) held (dismissing an appeal from a decision of UTHWATT, J.) that where a company advertised in a weekly newspaper a coupon consisting of a form setting out a number of football matches to be played in the following week and readers were invited to send in forecasts of the results of the matches, together with entrance fees, the aggregate of which, after deduction by the company of commission and expenses, was divided between the entrants whose predictions were most nearly correct, prizes being guaranteed by the promoters irrespective of entrance fees, this was conducting through a newspaper a competition in which prizes were offered for forecasts of the result of a future event, contrary to s. 26 (1) of the Betting and Lotteries Act, 1934, and was illegal. The court held that EVE, J., in *Elderton* v. *United Kingdom Totalisator Company, Ltd.* [1935] Ch. 373, had erred in placing too wide a construction on *Att.-G.* v. *Luncheon and Sports Club, Ltd.* [1929] A.C. 400.

COMPANY LAW AND PRACTICE

THE COHEN REPORT—III

THIS week we will examine the recommendations relating to prospectuses. The experience of the last sixteen years has revealed a number of ways in which the provisions which govern the issue of prospectuses can well be tightened up: and, if history repeats itself after this war, there will doubtless be a point of time when the market is favourable and a considerable number of capital issues are made. Obviously, therefore, in order that the investor may be protected, these provisions must be tightened up as soon as reasonably possible, for we know not the day nor the hour when the capital issue may become fashionable once more.

One of the points which received the attention of the committee was the machinery of application: and in this connection two matters in particular arose on which interesting and valuable recommendations have been made. The first deals with the "stag," as he is usually known—the opportunist who applies for shares hoping (and expecting) that they will go to a premium and that he can then dispose of them at once by renouncing his allotment, and so make a handsome profit. As the stag does not expect to pay more than the amount payable on application (if he chooses his issue well his application is certain to be scaled down by at least 50 per cent.), this represents money for old rope, particularly as, by keeping his ear close to the ground he gets to know if applications are flowing in well. If they are not, he will withdraw his application before allotment.

Now we are not concerned with ethical standards, but the activities of the stag (though apparently he has apologists) are definitely harmful. Withdrawals in quantity during the process of allotment make it impossible to allot in a proper manner, because every withdrawal alters the percentage of shares to be allotted to other applicants. The committee therefore felt that an endeavour should be made to "grass" all stags: and with this end in view they recommend that all applications pursuant to a prospectus shall be irrevocable for three full working days after the opening of the lists. This will not interfere with what might be called the amateur stag: a large class not having sufficient "gen" to be able to withdraw if the thing does not go well. However, the amateurs were not really harmful: they took a chance, and if the issue was a failure so was their speculation: they had no desire (or lacked the necessary information to enable them) to have it both ways.

The almost indecent haste frequently attendant upon the issue of shares must have struck many a person, even without counting the hapless individuals who have sat up all night settling prospectuses. (After all, they were paid for it—usually quite adequately.) It also struck the committee, who point out that the early closing of the lists (which could be, and often was, done immediately on publication of the prospectus) does not allow sufficient opportunity for the Press to comment, or the public to obtain expert advice. Therefore, they say, every prospectus should specify the date on which the lists will open, which must not be less than two full working days after the first advertisement of the prospectus. *En passant*, I wonder if a Victorian, or even Edwardian, committee would have regarded Saturday as a *dies non* in the City.

This last recommendation leads naturally to the recommendation that the general nature of the material contracts to be referred to in the prospectus (Sched. IV, Pt. I, para. 13) should be there set out. This may present some difficulty in deciding how much is necessary to describe the general nature of a contract: but the company which has nothing to hide need not be afraid of this. Physical limitation of space might in the past have been troublesome: but as the committee has also very sensibly recommended that the requirement of setting out the contents of the memorandum in the prospectus should be abolished, the pressure on space will be nothing like so heavy.

It is also recommended that copies of every material contract should be delivered to the Registrar for registration with the prospectus. It will be remembered that, at the present time, the prospectus must give a reasonable time and place at which copies of material contracts may be inspected; in future an intending investor will be able to go to the Registry to inspect them. It is greatly to be hoped that the investing public will take advantage of these very wise suggestions, if and when they become law; the lists will not open until at least two days after the first advertisement of the prospectus, and the copies will be readily available, so the intending investor really will be able to get full information about the contracts to enable him to form a judgment, without prejudicing his chance of putting in an application.

If such a person goes to the Registry he will find other documents on the file there for the first time, if the recommendations are accepted. He will find the reports (which he should already have read) required by Pt. II of Sched. IV (which will be considerably more informative than they were: *vide infra*), and he will also find the written consent of any expert to the inclusion in the prospectus of any copy of, extract from, or summary of his report (*vide infra*).

The existing provisions of Pt. II of Sched. IV, "Reports to be set out in prospectus," are considered by the committee to be inadequate, and they provide recommendations of considerable length designed to strengthen these provisions. While the new proposals are important, I think that, as there are so many matters still to be referred to, it would be better not to overload this article by setting out the recommendations in detail. A short reference to the committee's comments will give a line on the proposals, and those who, at this stage, need more detail should refer to the report itself.

Paragraph 1 of Pt. II required a report by the company's auditors with respect to the company's profits in each of the three financial years immediately preceding the issue of the prospectus (with a qualification for cases where the company had carried on business of less than three years) and with respect to dividends paid. This, says the committee, is inadequate in that—

(*a*) the period may be too short to give a picture of the trend of profits, and

(*b*) it does not make it clear that the auditors' report should give effect to such adjustments as are, in their opinion, necessary for purposes of the prospectus.

They also go on to point out that there is no provision at present which requires a holding company's prospectus to give information as to the results of the group as a whole. They propose to substitute a period of five years for three; to make the report include the assets and liabilities of the company, to cover point (*b*), above, and also to remedy the defect relating to holding companies.

Paragraph 2 of Pt. II required, in cases where the proceeds of an issue, or any part of them, were to be applied directly or indirectly in the purchase of any business, a report by named accountants on the profits of the business in each of the three financial years immediately preceding the issue of the prospectus. The report points out that this paragraph does not, in terms, cover the case where control of a business is obtained by the purchase of shares, and recommends that it should be made to do so. In addition to this, the recommendations for changes in para. 2 are very much on the same lines as those relating to para. 1.

General approval will undoubtedly be given to the extensions of Pt. II of Sched. IV indicated above, but whether such general approval will extend to another paragraph in the report is open to question. The report, after pointing out that the annual profits of a business over a fixed statutory period may not always be representative of the fair trend of the results of the business, says that this possibility cannot be dealt with by legislation. Then, however, it goes on to say . . . "we think that accountants will appreciate that mere compliance with an obligation to report on profits during a fixed statutory period would not justify them in refraining

from making some additional statement if for any reason, as, for example, war or trade cycles, the period covered by the report on profits was affected by exceptional circumstances." What does this sentence mean? If it means that an accountant who did so refrain would thereby incur some legal liability, the writer is bound to confess that he is unconvinced. If it means that an accountant so refraining would be guilty of conduct not in accordance with the highest traditions of his profession I feel it is doubtful whether this report is the appropriate medium for making pronouncements on moral standards.

Finally, experts' reports. The report recommends that it should be made illegal to include in a prospectus a copy of or extract from or summary of the report or valuation of an expert without his written approval of the insertion in the form and context in which it is to appear. How right this is and how wise to protect the expert (and the public) from extracts and summaries published without consulting the originator. This provision will be all the more necessary because, as we shall see later, it is proposed to put some measure of liability on the expert.

A CONVEYANCER'S DIARY

"STILL IN MY EMPLOY AND NOT UNDER NOTICE"

In the "Diary" of 17th May, 1941, I discussed the two cases arising out of the war of 1914–18, which referred to legacies given to servants on condition of their being still in the employment of the testator at the date of his death, the servant in question being in the army when the testator died. The only similar case which has so far appeared in the Law Reports arising out of the war recently concluded is *Re Feather* [1945] Ch. 343. It may be convenient at this stage to summarise the three cases mentioned. The first of them was *Re Cole* [1919] 1 Ch. 218. The testator, by a will made in 1912, gave a certain number of shares to each of his sons on the following conditions. Each was required, before attaining the age of twenty years, to enter the employ of a company with which the testator had been associated, or alternatively, before attaining the age of twenty years, was to intimate in writing to the testator's trustees his intention to enter the employ of that company. In either case the son was, before attaining the age of twenty-three years, actually to enter the employ of the company and to remain in such employ until the age of thirty-three years. The testator died in June, 1912, leaving three sons, with the eldest of whom alone we are here concerned. This son, Brian, was born in 1895 and attained the age of twenty-three in October, 1918. When Brian was eighteen, that is to say in the year 1913, he entered the service of the company as a clerk at a nominal salary of £1 5s. a month, which was later raised to £2 10s. a month. He thus fulfilled the requirement that he should enter the company's employ before reaching the age of twenty. He continued in this service until 15th September, 1914, on which date he voluntarily enlisted in the army with the approval of the directors. The summons was heard about ten days after the armistice, at which date Brian was still in the Forces. The evidence is quite briefly summarised in the report and is stated to have led to the conclusion that "although during his absence on duty the directors, in view of the fortune to which he was contingently entitled, did not continue payment of his salary, yet neither they nor he at any time intended or desired to terminate his service with the company, and that both intended that those services should be resumed as soon as he obtained his discharge." On these facts, Sargant, J., held as a fact that "during the time that (Brian) has been patriotically serving his country there have been superior and exhaustive claims upon his services, and he has not, in fact, been in a position to render any definite services to the Company . . . (But) the decision must turn on the answer to be given to the question of fact, whether the relations of employment between the employer and the employee were intended by both parties to remain as continuing conditions of employment. It seems to me that both parties intended that such relations were so to continue, although both parties intended also that during the necessary interval Mr. Brian Cole should be at liberty to serve his King and country." The decision of the learned judge appears therefore to have depended on the proposition that employment, that is, the relation of master and servant, can continue without the rendering of any actual services, and, indeed, despite the fact that lawfully binding claims upon the employee actually prevent his rendering any services at all, even if he wished to render them. At the same time the learned judge referred to *Herbert* v. *Reid*, 16 Ves. 481, where Lord Eldon had held that evidence is admissible in a case of this sort to prove whether or not the testator, after making his will, and after the departure of the servant, still continued to regard him as a servant. In *Re Cole*, he held the evidence was sufficient to show that the directors of the company did regard the employment as continuing. In *Re Drake* [1921] 2 Ch. 99, the position was somewhat more complicated. The testator had been tenant for life of a large landed estate, including a mansion, home farm, woodlands, and other land much of which he retained under his own control and management. Besides domestic servants, he employed an estate manager, a farm bailiff, a dairymaid, an engineer, a blacksmith, gardeners, carpenters, gamekeepers, woodmen, bricklayers, farmhands and labourers. In August, 1918, at which date several of these people were away at the war, some having gone as volunteers and some under conscription, he made a will leaving £200 "to each . . . of my indoor and outdoor servants who shall have been in my service for upwards of ten years prior to my death and shall not be under notice to leave whether given or received." The trustees took out a summons asking, among other things, whether indoor or outdoor servants who were away at the war were allowed to count the years of their war service towards the ten years necessary to qualify for these legacies. The evidence, again, is not very fully stated, and is confined to the following: "all joined on the clear understanding that their places would be kept open for them on the termination of their military service, and on being released from such service they returned to the testator's service." The testator in fact appears to have lived for some time after the end of the war, but the date of his death is not stated. On these facts, P. O. Lawrence, J., having held that the words "indoor and outdoor servants" covered all the classes of person mentioned, went on to hold that this case was distinguishable from *Re Cole*, the latter being one of "special circumstances." He said that in *Re Drake* the persons concerned were all employed at a weekly wage and "in all cases they left the testator's service with a promise by the testator to re-engage them on their return should they so desire." This last observation appears to have been the conclusion of fact drawn by the learned judge from the evidence, which seems to have satisfied him that the intention was not that the employment should continue, but that it should be begun once more on the return of the person concerned.

In this somewhat unsatisfactory state of the authorities, it is necessary to consider *Re Feather*. There too the report is not as full as it might be, since several of the material facts appear to be stated only in the headnote. I have, however, made some inquiries into the facts, and I believe that the following account, somewhat amplified from that in the Law Reports, is reasonably accurate. The legacy in question was given by a will made in 1937 to one Tapsell, who, I think, was the testator's chauffeur, on condition that he should still be "in my employ and not under notice." It is to be observed that the word here was "employ" and not "service"; there is thus an initial distinction from the phrase used in *Re Drake* and a parallel with that used in *Re Cole*. The legatee was "called up for military service" in 1940, and when the testator died, in 1943, he was still serving in the army. I understand, though this is not stated

in the report, that his family continued to live in a house provided for him by the testator and that the testator contributed to their rent. On this fact alone, even if the testator had not made other payments to Tapsell, there would clearly be material on which the court could hold that the relation of master and servant continued; the payments to the family must clearly be payments in connection with that relation or payments by way of private charity; there is no particular reason to ascribe a purely charitable motive in a case where there is an obvious alternative. The case was, however, finally decided on another ground, and it is upon this ground alone that it is reported. One of the trustees swore an affidavit stating that about a year before the testator's death he discussed the will with him and the legacy to Tapsell was mentioned; the trustee had suggested that it might be well to alter the terms of the will to remove any possible doubt whether Tapsell, being then in the army, could still be considered in the employ of the testator. "The testator at this interview emphatically affirmed that the defendant Tapsell was still in his employ." Although a statement of this kind is, of course, inadmissible in evidence to prove the meaning which the testator intended by the words used in his will, yet Cohen, J., held that it was admissible to prove that in the opinion of the testator the relation of master and servant continued. This distinction seems clearly to be sustained by the case of *Herbert* v. *Reid* mentioned above, where Lord Eldon had held that an exactly similar statement was admissible for that purpose.

I observe that nothing is said in the report as to the effect of the provision in the National Service (Armed Forces) Act, 1939, requiring an employer to reinstate in his service an employee who has been called up under that Act, when the time comes for that employee to be discharged. This enactment, I think, is, for the present purpose, disadvantageous to the employee, because it contemplates reinstatement, a notion which necessarily carries with it the implication that the employment is broken by the calling up of the employee. It is clear from *Re Feather* that evidence is admissible to show that in fact in a given case the employment continued, and was considered as continuing by both parties to it; but I think it must follow that in the absence of that evidence there will now be material to suggest that the Legislature itself contemplates that the calling up of the employee *prima facie* ends the employment. Were that not so, it would not be necessary to enact that the employment must be re-created after the war.

In most of these cases, no doubt, the testator would be horrified, as Mr. Feather evidently was, at the suggestion that war service may deny his bounty to the legatee. It is by this time in many cases too late to make the necessary alterations in a will to put the matter beyond doubt, but where that is still possible it should still be done. The evidence available in *Re Feather* may easily not be forthcoming, at least in so clear a form, in all cases. Where the testator is already dead, the personal representatives should, in view of *Re Feather*, seek carefully for evidence of statements made by the testator to the express or implied effect that the employee's military service did not terminate his employment. Such a statement will be reasonably conclusive. It should, however, be buttressed so far as possible with other evidence, as, for example, that the testator continued to give some privileges, or to make some payments, to the employee or his family. It seems clear from *Re Feather* that at the present stage the court will look sympathetically upon claims to legacies of this kind, and there seems no reason to think that the distinction intimated in *Re Drake* between weekly employment and employment for a longer term will now be pressed.

LANDLORD AND TENANT NOTEBOOK

ALTERNATIVE ACCOMMODATION IN SAME HOUSE

THE sharing of houses, as a temporary expedient, is being officially urged; and it may be that this will have some effect on the number of cases in which possession is sought of a controlled house on the ground that suitable alternative accommodation, consisting of part of that house, is or will be available to the tenant (Rent, etc., Restrictions (Amendment) Act, 1933, s. 3 (1) (*b*)).

This ground for possession has certain attractive features. It not only avoids the necessity for proving any of the sets of facts in the First Schedule to the Act, as does reliance on the availability of *any* suitable alternative accommodation, but also excludes argument on whether some of the numerous requirements of "suitable alternative accommodation" will be satisfied. For it will not be contended that the rent, which must be less than that at present paid, will not be "reasonably suitable to the means of the tenant" (s. 3 (*b*) (ii)), nor that the accommodation is not "reasonably suitable to the needs of the tenant and his family as regards proximity to place of work" (s. 3 (3) (*b*)). And in so far as "character" in s. 3 (3) (*b*) (ii) is a matter of "neighbourhood," the tenant will not be moving to a less fashionable address.

Nevertheless, there are a number of important obstacles to be considered, two of which I propose to discuss.

The first may be called the "*Neale* v. *Del Soto*" difficulty; the other the "clash of temperament" difficulty.

Neale v. *Del Soto* [1945] 1 K.B. 144; 89 SOL. J. 130 (C.A.), decided that a letting of two rooms in a house, the tenant sharing the use of the kitchen, bathroom, lavatory, garage, coalhouse and conservatory, was not protected, as the two rooms were not the subject of a separate letting as a dwelling. The decision was distinguished in *Cole* v. *Harris* [1945] 1 K.B. 474; 89 SOL. J. 477 (C.A.), in which the only common user was that of the bathroom and lavatory; but in the meantime it had been applied in *Sharpe* v. *Nicholls* [1945] 1 K.B. 382 (C.A.), which is, perhaps, the most important one of the three for present purposes. For in this case county court proceedings for the recovery of a cottage had resulted in an order for possession "subject to plaintiff allowing defendant a Rent Act protected tenancy of the front two rooms, together with joint use of kitchen and out-offices. Rent to be apportioned by registrar, failing agreement between the parties." This order was held to be invalid because there could not be a Rent Act protected tenancy of two rooms.

The "Notebook" has referred to these decisions on several occasions (89 SOL. J. 209, 266, 323), and it is sufficient for present purposes to say that the question appears to be largely one of degree but partly one of kind, i.e., regard must be had to what is shared as well as how much. Regard must be had to the observations of Lawrence, L.J., in *Cole* v. *Harris*, to the effect that if anything shared essential to the use of the premises as a dwelling was let jointly there was no letting of a dwelling-house, and both MacKinnon and Morton, L.JJ., instanced a kitchen as an essential and essentially a dwelling-room or living-room.

This being so, can a landlord fulfil the requirements of s. 3 (3) of the 1933 Act if his offer involves sharing the kitchen? It is important to observe here that the order held to be invalid in *Sharpe* v. *Nicholls* was so held because it mentioned "Rent Act protected tenancy" in terms. But what s. 3 (3) (*b*) insists upon is "premises to be let as a separate dwelling which will, in the opinion of the court, afford to the tenant security of tenure reasonably equivalent to the security afforded by the principal Acts in the case of a dwelling-house to which those Acts apply." Thus, the tenancy need not be protected by the Acts, but landlord and tenant can agree that the term shall be for, say, ninety-nine years, with an option to determine on the repeal of the Acts, and also determinable in the event of any of the circumstances set out and enumerated in s. 3 and Sched. I obtaining. Of course, the tenant could object that the section stipulates "premises to be let as a separate dwelling" and contend that, on the authority of *Neale* v. *Del Soto*, what was offered did not

constitute such. To which the answer would be that *Neale* v. *Del Soto* concerned a question of the right to have rent apportioned, so that it was essential that the tenant should show that s. 12, subss. (2) and (3), of the Act "*shall apply* to . . . part of a house let as a separate dwelling" and "any rooms in a house subject to a separate letting wholly or partly as a dwelling-house shall, for the purposes of this Act, be treated as part of a dwelling-house let as a separate dwelling" contained a description of his holding; whereas, for the purposes of proving availability of alternative accommodation, what he has to establish is that what is available is "*premises* to be let as a separate dwelling."

Admittedly the point is arguable; but there is, in some cases, namely, those of landlords who have not become such by purchasing the house since 3rd September, 1939, a further possibility, that is to say, if they seek possession not on the ground of the availability of alternative accommodation itself, but on the ground set out in para. (*h*) of the Schedule: "the dwelling-house is reasonably required by the landlord . . . for occupation as a residence for . . . Provided that an order or judgment shall not be made . . . if the court is satisfied that having regard to all the circumstances of the case, including the question whether *other accommodation* is available . . . greater hardship would be caused by granting the order . . . than by refusing to grant it." The landlord who has not "bought over the tenant's head" and who wishes to occupy the house, or whose son, daughter or parent wish to occupy it, may be troubled with the question of alternative accommodation, but if he offers part of the house claimed he will not be troubled by *Neale* v. *Del Soto*. And this is a case in which the wide powers to impose conditions when making orders for possession might be used: s. 5 (2) of the Increase of Rent, etc., Act, 1920, authorises the staying and suspending of execution, or postponing of the date of possession, subject to such conditions in regard to payment by the tenant of arrears of rates, rent, or mesne profits *and otherwise* as the court thinks fit. The conclusion of a formal agreement for a tenancy of a specified part of the house could thus be made a condition of the order for possession.

The "clash of temperament" difficulty may arise because, whether the availability of alternative accommodation is the ground for possession or not, a court has to be satisfied that it is reasonable to make the order (see *Benabo* v. *Horsley* (1920), 36 T.L.R. 859), and must take into account all circumstances affecting both parties (*Williamson* v. *Pallant* [1924] 2 K.B. 173). Hence, if people who are to share not only the same roof, but also the same kitchen, are likely to quarrel—and the prospects of disharmony are apt to be heightened by litigation—the court may well consider this a ground for exercising its discretion to refuse an order. And I choose the kitchen for an example not only because it is the room most commonly to be shared, but because of its importance, as described in the judgment of Morton, L.J., in *Cole* v. *Harris, supra* ("in many houses . . . the principal living-room, where the occupants spend the greater part of the day . . . very often it is the warmest part of the house," etc.); and also because clashes of temperament are in fact most likely to manifest themselves there, as witness reports in the lay press—and if I may be permitted to cite, for what it is worth, one count in Iago's somewhat wholesale indictment, not of a whole nation, but of a whole sex, it would be: "You are . . . wildcats in your kitchens." So much for the nature of this difficulty; the only other thing to say about it is that the acuteness of the housing shortage is now such that some judges are now less apt to refuse orders on this ground than they were.

TO-DAY AND YESTERDAY

October 29.—Gray's Inn was originally laid out quite differently. What is now Gray's Inn Square used to be divided into Chapel Court on the south and Coney Court on the north. North of Coney Court was the "Panyerman's Close." In 1579 Edward Stanhope, a member of the Inn, complained that a building he had erected adjoining the close suffered from water lying on the ground there and not draining away. Accordingly he undertook the expense of raising the ground and draining it and was granted a sixty years' tenancy at a yearly rent of 20s. His methods were unexpected. He raised the ground by allowing "the scavage of the street and the like noisome stuff" to be shot there without cost to himself and "contrariwise not without benefitt and gayne at the scavengers hands for such his sufferance." Instead of turning the close into "a faire & levell greene pasture to the beautie & pleasure" of the Inn, he cut it into several little plots and let it to poor persons for bleaching. He erected "stables for guesst horses" and "certene base cottages" and cut down seventeen trees. On the 29th October, 1605, the benchers decided to terminate his tenancy.

October 30.—Mr. John St. John Long practised medicine with great success in Harley Street, though he had not regularly qualified as a surgeon. His methods were certainly unorthodox. When an Irish lady brought him her daughter for treatment, fearing that she had a consumptive tendency, he adopted the principle of producing an external illness to draw off the internal disease, and made a great wound in her back. Alarming symptoms appeared and the girl could retain nothing that she swallowed, but Mr. Long was confident and cheerful and declared he would give 100 guineas to be able to produce such favourable signs in other patients. Finally, the girl died. At the inquest the verdict was manslaughter. On the 30th October, 1830, he was tried at the Old Bailey and convicted, but he was only fined £250. He died in 1834, and in the Harrow Road Cemetery his patients erected a handsome monument as a tribute.

October 31.—In 1826 Sir Walter Scott was on a visit to Paris and he noted in his diary on the 31st October: "We then visited Notre Dame and the Palace of Justice. The latter is accounted the oldest building in Paris, being the work of St. Louis. It is, however, in the interior, adapted to the taste of Louis XIV."

November 1.—On the 1st November, 1682, Robert Raymond was admitted to Gray's Inn, being then only nine years old. His father, Mr. Justice Raymond, of the Court of King's Bench, had been a member of the Inn. He himself rose to be Chief Justice of the King's Bench and a peer.

November 2.—One day in July, 1811, a gentleman came into the Quebec Arms, in Oxford Street, got into friendly conversation with the landlord and represented himself as the Rector of Frome, the curate of the Park Street Chapel and the nephew of the Recorder of Exeter. He came the following day and the day after and inspired enough confidence to get three bottles of wine, two sent to his lodgings and one drunk on the premises, without paying for them. He had in fact been engaged to assist at the chapel and had conducted a communion service, but he was not in Holy Orders, and it was all an imposture. His name was Tucker and on the 2nd November he was convicted at the Middlesex Sessions and sentenced to seven years' transportation.

November 3.—On the 3rd November, 1581, the records of Gray's Inn contain the entry: "Item, day is given unto Mr. Godfrey for his coming to the church till Monday come fortnight and then or at the next pension to show his reconciliation." Three months later he was again ordered to come to chapel on pain of expulsion. This Richard Godfrey of Norwich, described as "well practised, riche," had been in trouble as early as 1569 with the Ecclesiastical Commissioners for non-attendance at church. In 1579 he figured again in the State Papers. He was deprived of his chamber, and in May, 1582, it was disposed of to others. At this time many members of the Inn remained faithful to the Roman Catholic faith.

November 4.—In the 'nineties Canada suffered various financial scandals. Mr. Mercier, formerly Premier of Quebec, and Mr. Pacaud, his financial agent, were indicted for malfeasance in office in connection with them. On the 4th November, 1892, they were acquitted by a jury in the High Court of Quebec of conscious participation in the transactions.

A NEWER OLD BAILEY

It seems that early next year will begin the twelve months job of restoring the bomb-damaged Central Criminal Court to its rather unsatisfyingly Edwardian aspect of before the war. It took five years to erect to the designs of Edward Mountford, and on 27th February, 1907, it was opened by the King, accompanied by Queen Alexandra. Internal changes are predicted, however, and it seems likely that the City Lands Committee will consent

to the provision of a buffet for the feeding of jurors and witnesses. The Bar have their mess, undamaged in war, and the judges have long been adequately nourished at the City's table. Montagu Williams has described its Victorian abundance : " The meal was a very sumptuous one, especially upon the Wednesdays, for then Her Majesty's judges, who had attended the sessions, were the principal guests. The City judges and leading members of the Bar were always invited, as well as any distinguished men . . . who had business at the Sessions. The chaplain-in-ordinary at Newgate was a stout, sensual-looking man, who seemed as though he were literally saturated with City feasts . . . The judges, counsel and guests would repair upstairs to these prandial entertainments and would frequently be called down in the middle of their repast for the sentence of death to be passed on some wretched criminal." One dinner was provided at three and another at five, and some judges contrived to be present at both. The lavishness of the hospitality was not without its effect on the conduct of the evening session, at which experienced prisoners regarded themselves as having a sporting chance. " That's when the judges go the whole hog one way or the other," they would say. " I shall either get fifteen years or a five pound note out of the mission box."

Earlier Damage

War did not bring such complete destruction to the Old Bailey as did civil strife when the Gordon rioters of 1780 burnt and plundered it, as every reader of " Barnaby Rudge " will remember. Dr. Johnson, having passed the glowing ruins next day and seen the mob at it, noted: " There were not, I believe, a hundred ; but they did their work at leisure in full security, without sentinels, without trepidation, as men lawfully employed in full day. Such is the cowardice of a commercial place." The attack had been perfectly organised. When the mob came pouring down Holborn on that June evening led by a sailor shouting " Newgate ahoy ! " thirty men marched three abreast with crowbars and mattocks and divided into three parties to attack the doors. The shutters of the keeper's house were soon broken and a boy scrambled in, cheered by the crowd. The house was set ablaze, and the furniture, tumbled into the street, was piled up to make a bonfire against the great gates. In vain the turnkeys pushed it down, with broomsticks passed through the hatch, and swilled the woodwork with water ; the flames, spreading from the house, burnt the prison behind them. Meanwhile the frightened prisoners, still wearing their irons, were carried off in triumph by the crowd.

BOOKS RECEIVED

Preston and Newsom on Limitation of Actions. First Supplement to the Second Edition. By G. H. Newsom, of Lincoln's Inn, Barrister-at-Law. 1945. pp. (including Index) 36. London : The Solicitors' Law Stationery Society, Ltd. 5s. net.

Military Courts Manual. By Lieut.-Col. G. W. Treadwell, Solicitor of the Supreme Court. 1945. pp. viii and (including Index) 116. London : The Solicitors' Law Stationery Society, Ltd. 15s. net.

Burke's Loose-leaf War Legislation. Edited by Harold Parrish, Barrister-at-Law. 1944–45 Volume. Parts 8 and 9. London : Hamish Hamilton (Law Books), Ltd.

Ross Careers Books. The Legal Profession. By C. G. L. Du Cann, Barrister-at-Law. 1945. pp. 64. London : Robt. Ross & Co., Ltd. 2s. 6d. net.

English Studies in Criminal Science. The Social Problem Group. By D. Caradog Jones, M.A. With a preface by Lord Horder, G.C.V.O. 1945. Cambridge : Squire Law Library.

Summerhays and Toogood's Precedents of Bills of Costs. Second (Cumulative) Supplement to Eleventh Edition. By C. T. Parker and R. E. Fry, Practising Costs Draftsmen. 1945. pp. v and 80. London : Butterworth & Co. (Publishers), Ltd. 10s. 6d. net.

The Building Societies Acts, 1874 to 1940. Compiled by George C. Franey. 1945. pp. 138. London : Franey and Co., Ltd. 7s. 6d. net.

THE LAW SOCIETY

REFRESHER COURSES

The demand for the Council's refresher courses is so great that it was necessary to close the list of entries for the whole-time course starting on the 29th October a week before the course began.

The Council are considering the possibility of running the courses in duplicate and accordingly invite again applications for lectureships from solicitors and barristers.

One hundred and fifty-two students in all have attended the three courses which have so far been completed ; there are seventy-one attending the part-time course which began on the 24th September, and sixty attending the day-time course which began on the 1st October. This makes a total of 283 refresher course students to date.

The next part-time course begins on the 19th November and the next whole-time course for which entries can be accepted begins on the 26th November.

In future, instead of providing a separate set of local government lectures for each refresher course, the local government lectures will be run independently. It is hoped to provide a course of lectures on this subject every six weeks or two months. The six lectures in each course will be delivered during one week from 5—6.30 p.m., on Monday to Friday inclusive, and from 10.30—12 noon on Saturday. The first of these series of lectures will be delivered during the week beginning the 19th November, 1945.

THE MAGISTRATES' ASSOCIATION

Sir Frank Alexander, the Lord Mayor, opened the annual general meeting and conference of the Magistrates' Association in the Egyptian Hall of the Mansion House on the 19th October.

Viscount Sankey, Chairman of the Association, said that it celebrated its silver jubilee with a membership of over five thousand. To-day the task of magistrates was as difficult as that of any persons in the country. Profiteering throve ; respect for law and accustomed ways of life had broken down ; disturbances shook the economical, political and social structure of the country. The magistrates had somehow to maintain law and order. It had never been more necessary for them to remember to keep an even and unruffled mind. By enabling magistrates to exchange their experiences, the Association gave them great help.

Viscount Templewood, in an address on penal reform, said his experiences in Spain had shown him that there could be no proper system of justice and penal treatment under any totalitarian government. Many Europeans looked to this country to help them to re-establish human values. We should lead a movement to ensure a minimum code of rights for accused persons and a minimum standard of prison treatment. Instruction of the people of this country in our system of justice and penal treatment should be much fuller. We needed chairs of criminal science at our universities, and much ampler criminal statistics. The Criminal Justice Bill, 1938, held the field as a comprehensive attempt to cover the wide scope of penal treatment. It had two objectives : the reform of the offender and the protection of the community from dangerous criminals. Sentiment and prejudice had been rigidly excluded from its provisions. It had been intended to be neither severe nor lenient, but only rational. It had proposed several alternative methods of treatment for young offenders : improvements and developments in probation and Borstal, central remand homes and observation centres, and a new system of treatment that involved compulsory residence in a new type of hostel and compulsory attendance at work centres. Variety of treatment did not necessarily mean leniency. The Bill drew a distinction between the less and the more hardened criminals, providing for the first class corrective training in a special institution and for the second preventive detention. Corporal punishment excited controversy and prejudice far exceeding its present importance. It had been introduced by panic legislation which had become permanent, just as had the draconian Waltham Black Act of 1723, which had created 350 capital offences. The public should be given the fullest possible data for judging whether corporal and capital punishment were effective.

The Lord Chancellor, Lord Jowitt, was elected President of the Association. Opening the afternoon session, he said he was disturbed by his ignorance of the various problems of the magistracy, and members would not blame him for desiring to set up a Royal Commission. He desired help on such questions as the disqualification of licensed victuallers, beneficed clergy and politicians, all of whom might give useful service as magistrates. He thought a bench ought to consist of members of various shades of politics and be a perfect microcosm of the nation, under a chairman with some practical experience and legal training. He wanted to know at what age magistrates became too old. He did not propose to abolish lay magistrates ; he far preferred them to the kind of stipendiaries he would have to appoint if he replaced all the unpaid benches. He begged members never to allow considerations of time to weigh with them against the full and proper hearing of a case, with the object of making the accused person, even if wrongly convicted, feel that he had had a fair hearing. A week spent observing the procedure of assize courts would teach a man far more than he would learn from the whole of Stone's Justices Manual.

The Juvenile Offender and the State

Lady Inskip, in an address with this title, drew special attention to three groups of children who formed an undue proportion of those who came before juvenile courts—the backward, the maladjusted, and

the medical cases. The Bristol Court had for eighteen months referred every remanded child to the child guidance clinic for investigation. The figures showed that children appearing before the court did not represent a normal sample of the population, but that the numbers were weighted with children whose intellectual abilities were below normal. The children of dull intelligence who ought to be in classes for the dull formed a much larger proportion of the accused than they had before the war, but she drew special attention to the group with an intelligence quotient of 55 to 69, the higher-grade feeble-minded. In the population at large these children represented 2 per cent. ; in the court they made up a steady 15 to 20 per cent. They were the persistent truants and the doers of wilful damage, so seriously subnormal as to require special education. This they rarely got, owing to the quite inadequate provision of special schools—the whole country could only accommodate one-sixth of them. Home Office schools, Borstals and prisons were full of them. The maladjusted child who behaved unaccountably was also well known to the juvenile courts. If such children could be sent to hostels and observation centres under expert care, their behaviour might be improved, but such hostels were few. The duty of providing education for the backward child had never been properly tackled and was made more difficult by lack of interest. She urged magistrates to visit the special schools in their areas.

Mr. F. J. POWELL, speaking on the citizen and legal assistance, suggested that every bench of magistrates should read and study the Rushcliffe Report with a view to carrying out those of its recommendations which did not require fresh legislation. Some magistrates asked why public money should be spent in trying to secure the acquittal of a person who had committed a crime against society. Guilt or innocence had to be proved with due regard to the rules of law and procedure. The conduct of a case was a very specialised matter, beyond the capacity of a prisoner. Other magistrates considered that to be asked for legal aid implied that the bench would not give the accused person a fair trial. Few laymen were familiar with court procedure or could cross-examine witnesses. The bench could not know what facts the accused ought to place before the court, for it did not know the facts. Moreover, legal aid made for the smooth working of the court and added to the dignity of the proceedings. It relieved the bench of much anxiety and was a powerful help in ensuring that justice was done.

OBITUARY

MR. S. CARTWRIGHT

Mr. Sydney Cartwright, solicitor, of Sevenoaks, Kent, died on Friday, 26th October. He was admitted in 1888.

MR. G. E. WALKER

Mr. George Edward Walker, solicitor, of Messrs. Walker and Hargreaves, solicitors, of Blackburn, died recently. He was admitted in 1907.

PARLIAMENTARY NEWS

ROYAL ASSENT

The Royal Assent was given to the following Bills on 24th October :—

COATBRIDGE AND SPRINGBURN ELECTIONS (VALIDATION).
INDIAN FRANCHISE.

HOUSE OF LORDS

INDIAN DIVORCE BILL [H.C.].
Read Second Time. [25th October.

MINISTRY OF HEALTH PROVISIONAL ORDER CONFIRMATION (DONCASTER) BILL [H.L.].
Read Third Time. [25th October.

MINISTRY OF HEALTH PROVISIONAL ORDER CONFIRMATION (WESTON-SUPER-MARE) BILL [H.L.].
Read Third Time. [25th October.

NEWCASTLE-UPON-TYNE CORPORATION (TROLLEY VEHICLES) PROVISIONAL ORDER BILL [H.L.].
Read Third Time. [25th October.

PUBLIC HEALTH (SCOTLAND) BILL [H.L.].
Read Second Time. [25th October.

SUPPLIES AND SERVICES (TRANSITIONAL POWERS) BILL [H.C.].
Read First Time. [23rd October.

WAR DAMAGE (VALUATION APPEALS) BILL [H.L.].
Reported without Amendment. [25th October.

HOUSE OF COMMONS

BUILDING RESTRICTIONS (WAR-TIME CONTRAVENTIONS) BILL [H.C.].
To make provision as respects works on land carried out during the war period, and uses of land begun during that period, which do not comply with building laws or planning control.
Read First Time. [26th October.

CIVIL DEFENCE (SUSPENSION OF POWERS) BILL [H.C.].
To suspend certain provisions of the Civil Defence Acts, 1937 and 1939.
Read First Time. [26th October.

COLNE VALLEY WATER BILL [H.L.].
Read Second Time. [22nd October.

CONSOLIDATED FUND (NO. 1) BILL [H.C.].
Read Third Time. [26th October.

EXPIRING LAWS CONTINUANCE BILL [H.C.].
To continue certain expiring laws.
Read First Time. [24th October.

GLOUCESTER CORPORATION BILL [H.L.].
Read Second Time. [22nd October.

MID SOUTHERN UTILITY BILL [H.L.].
Read Second Time. [22nd October.

NATIONAL SERVICE (RELEASE OF CONSCIENTIOUS OBJECTORS) BILL [H.C.].
To enable conscientious objectors conditionally registered under the National Service Acts, 1939 to 1942, to be released, before the date on which the present emergency is deemed to end for the purposes of those Acts, from the condition subject to which they were registered.
Read First Time. [26th October.

PLYMPTON ST. MARY RURAL DISTRICT COUNCIL BILL [H.L.].
Read Second Time. [22nd October.

POLICE (OVERSEAS SERVICE) BILL [H.C.].
To provide for the maintenance of British civil police forces in certain countries and territories outside the United Kingdom ; for the discipline and pensions of members of such forces.
Read First Time. [26th October.

REIGATE CORPORATION BILL [H.L.].
Read Second Time. [22nd October.

STATUTORY INSTRUMENTS BILL [H.C.].
To repeal the Rules Publication Act, 1893, and to make further provision as to the instruments by which statutory powers to make orders, rules, regulations and other subordinate legislation are exercised.
Read First Time. [26th October.

TRUNK ROADS BILL [H.C.].
To amend the law relating to Trunk Roads.
Read First Time. [26th October.

WALLASEY CORPORATION BILL [H.L.].
Read Second Time. [22nd October.

QUESTIONS TO MINISTERS

COMPENSATION CLAIMS IN MALAYA

Captain Sir PETER MACDONALD asked the Secretary of State for the Colonies what arrangements have now been made to set up machinery to provide for the compensation of persons who have suffered personal loss of property and goods in Malaya as a result of the Japanese occupation.

The SECRETARY OF STATE FOR THE COLONIES (Mr. George Hall) : Arrangements are being made to set up a claims registration office in Malaya to register all claims against the civil authorities, including those claims in respect of personal losses of property and goods, which have been provisionally registered in this country. I am not yet in a position to state the extent to which it may prove to be possible to award compensation in respect of such losses and accordingly registration must not be considered as committing the future Malayan Government, when established, to the payment of compensation.
[24th October.

JUSTICES OF THE PEACE

Mr. JANNER asked the Attorney-General whether, as the considerations which led to the creation of the supplementary list of justices of the peace apply with equal force to the functions of a judicial authority under the Acts relating to lunacy and mental deficiency, he will take steps to see that justices of the peace on the supplementary list do not in future exercise any powers under these Acts.

The ATTORNEY-GENERAL : I think it is undesirable that a justice on the supplemental list should exercise the power of a judicial authority under the Lunacy and Mental Treatment Acts. The desirability of drawing the attention of those concerned to this expression of opinion is under consideration.
[24th October.

Professional Announcement

Messrs. WILKINSON & MARSHALL (G. E. WILKINSON, H. A. SOLOMON, H. GANDY and T. M. HARBOTTLE), of Newcastle-upon-Tyne, announce that they have taken into partnership Mr. GEORGE DUDLEY CRAIG, M.A, Cantab., late Squadron-Leader 607 Squadron, R.A.F., and Mr. JOHN FORBES LORIMER, M.B.E., who has been associated with the firm for many years. The name of the firm remains unchanged.

NOTES OF CASES

COURT OF APPEAL

Court Line, Ltd. *v.* R.

Scott and du Parcq, L.JJ., and Stable, J. 15th May, 1945

Shipping—Vessel torpedoed in convoy—Foundering while on tow—Constructive total loss—"Abandonment"—Hirer's liability between torpedoing and foundering—Marine Insurance Act, 1906 (6 *Edw.* 7, *c.* 41), *s.* 60 (1), (2) (i).

Appeal from a decision of Tucker, J.

The *Lavington Court* was requisitioned by His Majesty's Government on the 18th May, 1940, on the common form of Government time-charter, T.99A. The amount in issue was agreed at £1,257 1s. for the days between the 18th July and the 1st August, 1942. On the former date the *Lavington Court* was struck by an enemy torpedo while in convoy and on the latter she foundered suddenly when in tow. The question for decision was whether, under the terms of the time-charter, freight was payable or not. The owners in a petition of right claimed that sum, but made no claim as from the date of her foundering. Tucker, J., upheld the claim, and the Crown now appealed. (*Cur. adv. vult.*)

SCOTT, L.J., said that the Crown challenged Tucker, J.'s decision for three main reasons: (1) that the events which happened constituted a constructive total loss within cl. 25 of the charter-party, which provided: " . . . Should the vessel become a constructive total loss such loss shall be deemed to have occurred and the hire under this contract shall cease as from the day of the casualty resulting in such loss"; (2) frustration of the adventure; (3) repudiation of the contract, in that, the ship being damaged and the crew being no longer on board, the owners were unable to perform a fundamental part of the contract. The Crown did not argue, but did not abandon, a contention that there was an actual total loss of the ship on the 18th July. The real question in the appeal was whether there was a constructive total loss. His lordship referred to s. 60 (1) and (2) (i) of the Marine Insurance Act, 1906, on the question of constructive total loss, referred to the master's decision to transfer the whole ship's company of the *Lavington Court* to the naval sloop *Wellington*, which was in attendance, and said that it was a fair inference that he took that decision in the firm belief—which was in fact well founded—that the naval authorities were sure to take all practicable steps to locate and pick up the *Lavington Court*, and do their best to tow her to a port where she could be repaired. The really important facts, in his (his lordship's) opinion, were (1) that his primary concern was for the safety of the crew, and (2) that his only practicable course was to entrust the safety of the ship to the care of the naval authorities acting in the joint interest of the Government and of the owners to whom, as master, he was responsible. The prompt action taken by all the naval authorities from first to last in endeavouring to save, not only military cargo of high importance, but a comparatively new merchant ship of great national value, showed how well justified the master was in relying upon their help to do everything possible. That reliance was an important fact. As to the law, was the ship "abandoned on account of her actual loss appearing to be unavoidable," so as to give a right to the charterer to claim cesser of hire under cl. 25 on the footing of a constructive total loss? The case fell within the principles laid down in *Bradley* v. *Newsom, Sons and Company* [1919] A.C. 16. The position had been the same legally as if, by arrangement with the naval authorities, the master had been allowed to send his own S O S to salvage tugs at Gibraltar. He never gave up possession of the ship, except in the barest physical sense, and that was by enemy compulsion and involuntarily. Therefore there was no abandonment. Even if the master's action had been sufficient to constitute abandonment *per se*, it would not have satisfied s. 60 (1), because he (his lordship) could not draw the necessary further inference that the master thought "a total loss unavoidable." His lordship then held that there was no frustration, and, after referring to *Bradley* v. *Newsom, Sons and Company* (119 L.T. Rep., at pp. 243–244; [1919] A.C., at pp. 32–35), *per* Lord Haldane, and *per* Lord Wrenbury (119 L.T. Rep., at pp. 249–251; [1919] A.C., at pp. 51–55) said that there was no repudiation of the contract by the master, but only the operation of an external peril; and certainly no acceptance of the repudiation, if any, by the charterer. The appeal failed.

DU PARCQ, L.J., and STABLE, J., gave concurring judgments. Leave was given to appeal to the House of Lords.

COUNSEL: *The Solicitor-General* (Sir David Maxwell Fyfe, K.C.), and *Devlin*, K.C.; *Sir Robert Aske*, K.C., and *Bateson*.

SOLICITORS: *The Treasury Solicitor; Holman, Fenwick and Willan.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COURT OF CRIMINAL APPEAL

R. *v.* Jarmain

Wrottesley, Stable and Lynskey, JJ.

22nd October, 1945

Criminal law — Murder — Manslaughter — Felony involving involuntary act causing death.

Appeal from conviction.

Having bought an automatic pistol with the object of using it to commit armed robbery, on the 28th June, 1945, between 5 and 6 p.m., the appellant entered a garage and found the deceased counting the day's takings. His account was that he held the revolver in his right hand and pointed it at her, demanding the money. She said, "don't be silly," whereupon the appellant changed the revolver to his left hand and cocked it twice, hoping to frighten her. That action introduced a live round into the breech. He kept the revolver pointed at her and, he said, must inadvertently have pressed the trigger. The women fell shot, and the appellant grabbed a pile of notes and ran out. After two operations the woman died of her wounds. The appellant was convicted before Charles, J., at the Central Criminal Court, of murder and sentenced to death. He appealed. The court having heard the argument, on 10th October announced that the appeal was dismissed, and that their reasons would be given later. (*Cur. adv. vult.*)

WROTTESLEY, J., reading the judgment of the court, said that it was argued for the appellant that Charles, J., in summing up, had confused inadvertence as to what the results of his action might be with inadvertently doing the very act itself; and that, to render himself guilty of murder, the appellant must have pressed the trigger voluntarily and not inadvertently, so that if the jury accepted his evidence that his will did not go with the action of his finger he was guilty of manslaughter and not of murder. Counsel based his argument on *Woolmington* v. *Director of Public Prosecutions* [1935] A.C. 462, at p. 482; 79 SOL. J. 401, and on Lord Birkenhead's speech in *Director of Public Prosecutions* v. *Beard* [1920] A.C. 479; 64 SOL. J. 340, and submitted that the mere fact that the general design was the completion of a crime involving violence was not sufficient to make the killing which occurred in the course of it murder. Counsel for the Crown pointed out that Charles, J.'s direction was practically verbatim the law as laid down by the Court of Criminal Appeal in *R.* v. *Larkin* [1943] K.B. 174; 87 SOL. J. 140. The question, therefore, was whether the fact that the firing of the pistol was, or might have been, inadvertent created an exception to the general rule laid down in that case, based as it was on a long line of precedent. It was impossible to isolate, as counsel for the appellant suggested, the pressure of the appellant's finger on the trigger from all the circumstances which made that a deadly thing to do. The act in the performance of which the appellant killed the woman was compounded of many elements and circumstances. The pistol had to be loaded, cocked and presented, as well as fired, in order that death might result. All those elements were present, and all but the last brought about by the appellant's voluntary act. He had even completed the robbery. In the opinion of the court the object and scope of this branch of the law was, at least, that whoever used violent measures in the commission of a felony involving personal violence did so at his own risk and was guilty of murder if those violent measures resulted even inadvertently in the death of the victim. For that purpose the use of a loaded firearm to frighten the victim into submission was a violent measure.

COUNSEL: *F. H. Lawton; Byrne.*

SOLICITORS: *Registrar of the Court of Criminal Appeal; Director of Public Prosecutions.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CORRECTION

Massey v. *S. & P. Lingwood, Ltd.* (*ante*, p. 316)

The last sentence but one of the judgment of Humphreys, J., in the above report should have read: "He (his lordship) was far from saying that, even had the girl been careless and disobedient, there would have been a good answer to the inspector's contentions."

Mr. Aneurin Bevan stated in the House of Commons on Thursday, 25th October, that he was preparing a Bill for submission to the House at an early date to deal with certain outstanding difficulties in connection with rent control.

The pavement on the north side of Lincoln's Inn Fields has been named "Canada Walk" to commemorate the close ties between the Borough of Holborn and the Canadian Air Force, which for nearly six years has used 20, Lincoln's Inn Fields as headquarters.

RECENT LEGISLATION

STATUTORY RULES AND ORDERS, 1945

No. 1301. **County Council, England.** County of East Sussex (Electoral Divisions) Order. Oct. 16.

No. 1294. **Local Elections** (Supplementary Provisions) (No. 2) Order. Oct. 11.

Nos. 1264–69. **Town and Country Planning,** England and Wales. Various Special Interim Development Orders.

No. 1243. **Unemployment Insurance** (Anomalies) (Amendment) Order. Oct. 3.

No. 1244. **Water, England.** Compulsory Acquisition of Land. Water (Compulsory Purchase) Regulations. Sept. 29.

[Any of the above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, London, W.C.2]

NOTES AND NEWS

Honours and Appointments

The Lord Chancellor has appointed Mr. BENJAMIN ROWLAND RICE-JONES to be a Judge of County Courts, the appointment to date from the 31st October, 1945, and has directed that he shall sit temporarily at Bow County Court. Mr. Rice-Jones was called by the Inner Temple in 1912.

Mr. A. DENIS GERRARD, K.C. (Northern Circuit), has been appointed to succeed Sir Hartley Shawcross, the Attorney-General, as Recorder of Salford. Mr. Gerrard was called by Gray's Inn in 1927.

Mr. R. S. T. CHORLEY, barrister-at-law, one of the new Barons created recently, has been Sir Ernest Cassel Professor of Commercial and Industrial Law in the University of London since 1930. He was called by the Inner Temple in 1920.

Notes

H.M. The King has graciously consented to become Patron of The Royal Cancer Hospital.

The Royal Court of Guernsey has decided to introduce a law permitting divorce.

Alderman Mary Sykes, solicitor, is to be first woman Mayor of Huddersfield. She was admitted in 1923.

The Minister of Town and Country Planning (Mr. Lewis Silkin) and the Secretary of State for Scotland (Mr. Joseph Westwood) have jointly appointed a committee with the following terms of reference :—

"To consider the general questions of the establishment, development, organisation and administration that will arise in the promotion of new towns in furtherance of a policy of planned decentralisation from congested urban areas; and in accordance therewith to suggest guiding principles on which such towns should be established and developed as self-contained and balanced communities for work and living."

COURT PAPERS

SUPREME COURT OF JUDICATURE

COURT OF APPEAL AND HIGH COURT OF JUSTICE—CHANCERY DIVISION

MICHAELMAS SITTINGS, 1945

ROTA OF REGISTRARS IN ATTENDANCE ON

Date.	Emergency Rota.	Appeal Court I.	Mr. Justice Uthwatt.
Mon., Nov. 5	Mr. Andrews	Mr. Farr	Mr. Blaker
Tues., ,, 6	Jones	Blaker	Andrews
Wed., ,, 7	Reader	Andrews	Jones
Thurs., ,, 8	Hay	Jones	Reader
Fri., ,, 9	Farr	Reader	Hay
Sat., ,, 10	Blaker	Hay	Farr

Date.	Group A. Mr. Justice Cohen. *Non-Witness.*	Mr. Justice Vaisey. *Witness.*	Group B. Mr. Justice Evershed. *Witness.*	Mr. Justice Romer. *Non-Witness.*
Mon., Nov. 5	Mr. Hay	Mr. Reader	Mr. Andrews	Mr. Jones
Tues., ,, 6	Farr	Hay	Jones	Reader
Wed., ,, 7	Blaker	Farr	Reader	Hay
Thurs., ,, 8	Andrews	Blaker	Hay	Farr
Fri., ,, 9	Jones	Andrews	Farr	Blaker
Sat., ,, 10	Reader	Jones	Blaker	Andrews

STOCK EXCHANGE PRICES OF CERTAIN TRUSTEE SECURITIES

Bank Rate (26th October, 1939) 2%

	Div. Months	Middle Price Oct. 29 1945	Flat Interest Yield £ s. d.	‡ Approximate Yield with redemption £ s. d.
British Government Securities				
Consols 4% 1957 or after	FA	111	3 12 1	2 16 6
Consols 2½%	JAJO	91½	2 14 8	—
War Loan 3% 1955–59	AO	102¾	2 18 4	2 13 4
War Loan 3½% 1952 or after	JD	103⅜xd	3 7 9	2 19 3
Funding 4% Loan 1960–90	MN	113½	3 10 6	2 16 5
Funding 3% Loan 1959–69	AO	101	2 19 5	2 18 2
Funding 2½% Loan 1952–57	JD	101¾	2 14 0	2 9 4
Funding 2½% Loan 1956–61	AO	99	2 10 6	2 11 7
Victory 4% Loan Av. life 18 years	MS	113½	3 10 6	3 0 4
Conversion 3½% Loan 1961 or after	AO	106½	3 5 9	2 19 3
National Defence Loan 3% 1954–58	JJ	103	2 18 3	2 11 7
National War Bonds 2½% 1952–54	MS	100½	2 9 10	2 9 3
Savings Bonds 3% 1955–65	FA	101½	2 19 1	2 16 7
Savings Bonds 3% 1960–70	MS	100¾	2 19 6	2 18 9
Local Loans 3% Stock	JAJO	97¼	3 1 4	—
Bank Stock	AO	398	3 0 4	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	99½	3 0 4	—
Guaranteed 2¾% Stock (Irish Land Act 1903)	JJ	96	2 17 4	—
Redemption 3% 1986–96	AO	103½	2 18 1	2 17 4
Sudan 4½% 1939–73 Av. life 16 years	FA	116	3 17 7	3 4 1
Sudan 4% 1974 Red. in part after 1950	MN	110	3 12 9	1 16 4
Tanganyika 4% Guaranteed 1951–71	FA	106	3 15 6	2 13 11
Lon. Elec. T.F. Corp. 2¼% 1950–55	FA	98	2 11 0	2 15 3
Colonial Securities				
*Australia (Commonw'h) 4% 1955–70	JJ	107	3 14 9	3 3 5
Australia (Commonw'h) 3½% 1964–74	JJ	101	3 4 4	3 3 7
Australia (Commonw'h) 3% 1955–58	AO	100	3 0 0	3 0 0
†Nigeria 4% 1963	AO	113	3 10 10	3 1 0
*Queensland 3½% 1950–70	JJ	102	3 8 8	2 19 4
Southern Rhodesia 3½% 1961–66	JJ	105	3 6 8	3 1 11
Trinidad 3% 1965–70	AO	100	3 0 0	3 0 0
Corporation Stocks				
*Birmingham 3% 1947 or after	JJ	98	3 1 3	—
*Croydon 3% 1940-60	AO	101	2 19 5	—
*Leeds 3½% 1958–62	JJ	103	3 3 1	2 19 0
*Liverpool 3% 1954–64	MN	101	2 19 5	2 17 4
Liverpool 3½% Red'mable by agreement with holders or by purchase	JAJO	106	3 6 0	—
London County 3% Con. Stock after 1920 at option of Corporation	MSJD	98	3 1 3	—
*London County 3½% 1954–59	FA	106	3 6 0	2 14 0
Manchester 3% 1941 or after	FA	98	3 1 3	—
*Manchester 3% 1958–63	AO	101	2 19 5	2 18 2
Met. Water Board 3% "A" 1963–2003	AO	99	3 0 7	3 1 0
*Do do. 3% "B" 1934–2003	MS	100¼	2 19 10	—
*Do. do. 3% "E" 1953–73	JJ	101	2 19 5	2 17 0
Middlesex C.C. 3% 1961–66	MS	101	2 19 5	2 18 4
*Newcastle 3% Consolidated 1957	MS	101	2 19 5	2 18 0
Nottingham 3% Irredeemable	MN	97	3 1 10	—
Sheffield Corporation 3½% 1968	JJ	107	3 5 5	3 1 6
Railway Debenture and Preference Stocks				
Gt. Western Rly. 4% Debenture	JJ	113½	3 10 6	—
Gt. Western Rly. 4½% Debenture	JJ	117	3 16 11	—
Gt. Western Rly. 5% Debenture	JJ	128	3 18 2	—
Gt. Western Rly. 5% Rent Charge	FA	125	4 0 0	—
Gt. Western Rly. 5% Cons. G'rteed.	MA	123½	4 1 0	—
Gt. Western Rly. 5% Preference	MA	110½	4 10 6	—

* Not available to Trustees over par.
† Not available to Trustees over 115.
‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.

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